

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

August 1, 1997

EARL W. WERLINE, III	)	
Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	
	)	OCAHO Case No. 97B00023
PUBLIC SERVICE ELECTRIC	)	
& GAS COMPANY	)	
Respondent.	)	

ORDER GRANTING RESPONDENT'S REQUEST FOR ATTORNEY'S FEES

A final decision and order was issued in this matter on May 29, 1997. In that order, I gave complainant until June 20, 1997 to file opposing papers in response to respondent's request for attorneys fees. No response has been made.

Respondent's counsel has filed an affidavit in which he stated that he is an associate general attorney for Public Service Electric & Gas Co. and that he was assigned to handle the case on January 27, 1997. He further stated that he spent 4.1 hours researching the issues and preparing an answer and a motion to dismiss, and that the cost of his time is \$125.00 an hour.

There having been no challenge to the reasonableness of the hourly rate or the time spent by respondent's attorney, I find that both are reasonable.

STANDARDS FOR AWARDING ATTORNEY'S FEES

An award of attorney's fees in OCAHO cases arising under 8 U.S.C. § 1324b is governed by § 1324b(h), which provides that an Administrative Law Judge

... may allow a prevailing party, other than the United States, a reasonable attorney's fee if the losing party's argument is without reasonable foundation in law and fact.

It is clear that the respondent is the prevailing party in this case having achieved the dispositive relief sought in the motion to dismiss. Cf. Huesca v. Rojas Bakery, 4 OCAHO 654, at 8-10 (1994).

## NATURE OF THE CASE

In determining whether or not a losing party's argument is without reasonable foundation in law and fact, it is necessary to be cautious and to avoid any chilling effect upon legitimate civil rights lawsuits which are less than airtight. See, e.g., Sassower v. Field, 973 F.2d 75, 79 (2d Cir. 1992), cert. denied, 507 U.S. 1043 (1993). This is not such a case. Rather, it is precisely the type of case which the statute was intended to deter.

The gravamen of Werline's complaint is that he has been employed at Public Service Electric & Gas Co. since 1981, that he presented documents entitled "Statement of Citizenship proving my Citizenship and asserting my rights as a Citizen under Federal law, and affecting others linked to my status" and "Affidavit of Constructive Notice asserting my rights as a Citizen of the U.S. as seen by the U.S. Supreme Court, and there by (sic) revealing that I am not to be treated as an alien" which Public Service Electric & Gas Co. did not accept as authorization to cease withholding sums from his wages for federal income taxes and social security contributions. Werline's theory, and that of the National Worker's Rights Committee whose Director represents him, is that United States citizens are not subject to withholding for taxes and that he is being treated as an alien. However complainant seeks to characterize it, this is a tax protester case.

Complainant's theory has been extensively reviewed previously in this forum and found to be totally without merit. Hogenmiller v. Lincare, Inc., 7 OCAHO \_\_\_\_ (1997); Hutchinson v. GTE Data Servs. Inc., 7 OCAHO \_\_\_\_ (1997); D'Amico v. Erie Community College, 7 OCAHO 948 (1997); Hollingsworth v. Applied Research Assocs., 7 OCAHO 942 (1997); Hutchinson v. End Stage Renal Disease Network, Inc., 7 OCAHO 939 (1997); Kosatschkow v. Allen-Stevens Corp., 7 OCAHO 938 (1997); Werline v. Public Service Electric & Gas Co., 7 OCAHO 935 (1997); Cholerton v. Robert M. Hadley Co., 7 OCAHO 934 (1997); Lareau v. USAir, Inc., 7 OCAHO 932 (1997); Jarvis v. A.K. Steel, 7 OCAHO 930 (1997); Mathews v. Goodyear Tire & Rubber Co., 7 OCAHO 929 (1997); Winkler v. West Capital Fin. Servs., 7 OCAHO 928 (1997); Smiley v. Philadelphia, 7 OCAHO 925 (1997); Austin v. Jitney-Jungle Stores of Am., Inc., 6 OCAHO 923 (1997); Wilson v. Harrisburg Sch. Dist., 6 OCAHO 919 (1997); Costigan v. Nynex, 6 OCAHO 918 (1997); Boyd v. Sherling, 6 OCAHO 916 (1997); Winkler v. Timlin Corp., 6 OCAHO 912 (1997); Horne v. Hampstead, 6 OCAHO 906 (1997); Lee v. Airtouch Communications, 6 OCAHO 901 (1996), appeal filed, No. 97-70124 (9th Cir. 1997); Toussaint v. Tekwood Assocs., Inc.,<sup>1</sup> 6 OCAHO 892 (1996), appeal filed No. 96-3688 (3d Cir. 1996).

Each of these cases was dismissed at an early stage for want of subject matter jurisdiction or for failure to state a claim. None of these cases provides any basis whatever for pursuit of

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<sup>1</sup> While neither Kotmair nor the National Worker's Rights Committee appear of record in Toussaint, the allegations are substantially similar.

complainant's eccentric theories in this forum. Complainant's allegations do not deal in any way with the subject matter governed by 8 U.S.C. § 1324b and there is not the slightest reason to believe that complainant's disagreement with the Internal Revenue Code or the Social Security system has anything to do with immigration-related unfair employment practices. This case was filed on November 18, 1996. Toussaint was decided on September 12, 1996. Toussaint was followed by Lee on November 21, 1996 and Horne on January 17, 1997. Respondent's representative is and has for some time been on notice that the Office of the Chief Administrative Hearing Officer (OCAHO) is not the appropriate forum for tax protests.

Complainant's claims have no reasonable foundation in law or fact. Complainant will pay to respondent the sum of \$512.50 in attorney's fees.

SO ORDERED.

Dated and entered this 1st day of August, 1997.

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Ellen K. Thomas  
Administrative Law Judge

#### APPEAL INFORMATION

In accordance with the provisions of 8 U.S.C. § 1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such Order seeks timely review of that Order in the United States

Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after the entry of such Order.

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 1997, I have served copies of the foregoing Order Granting Respondent's Request for Attorney's Fees on the following persons at the addresses indicated.

Poli Marmelejos, Esq.  
Acting Special Counsel  
Office of Special Counsel for Immigration-  
Related Unfair Employment Practices  
P.O. Box 277728  
Washington, D.C. 20038-7728

Mr. Earl W. Werline, III  
P.O. Box 488  
Cedarville, NJ 08311-9999

Mr. John B. Kotmair, Jr.  
National Worker's Rights Committee  
12 Carroll Street  
Westminster, MD 21157-9999

Public Service Electric & Gas Company  
P.O. Box 236  
Hancocks Bridge, NY 08039-0000

Office of the Chief Administrative Hearing Officer  
5107 Leesburg Pike, Suite 2519  
Falls Church, VA 22041

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Cynthia A. Castañeda  
Legal Technician to  
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Office of the Chief Administrative Hearing  
Officer  
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